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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/743,577	03/12/2001	Herbert Schlachter	0147-0220P	5756

2292 7590 07/23/2003

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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 07/23/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/743,577

Applicant(s)

SCHLACHTER, HERBERT

Examiner

Sharmila S. Gollamudi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-13, 17-19 and 22-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-13, 17-19 and 22-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

Art Unit: 1616

## **DETAILED ACTION**

### ***Status of Application***

Receipt of request for Continued Examination received on May 9, 2003 is acknowledged. Claims 2-13, 17-19, and 22-40 are included in the prosecution of this application. Claims 1, 14, 20, and 21 have been cancelled.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 2, 7, 9, 11, 17, 18, 19, 30-31, 34-35, 38-40 are rejected under 35**

**U.S.C. 102(b) as being anticipated by Abad (5538740).**

Abad discloses a therapeutic and cosmetic composition for dermatitis, rashes, burns, wrinkles, and regeneration of the skin (col. 4, lines 45-60 and col. 8, lines 40-49). Example XIV discloses the active agent containing amino acids, menthol, the excipient from example IV containing zinc peroxide, polyethylene glycol (humectant), and calcium carbonate.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1616

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 2-9, 11, 13, 17-19, 22-35, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hersh et al (5,667,791).**

Hersh et al teach a topical composition for skin damage containing squalene, vegetable oil containing fatty acids, seaweed, green tea (epigallocatechin), Vitamin B, Vitamin C, glycopeptide zinc, Epidermal Growth Factor (amino acids), and water. Hersh teaches that zinc enhances the invention and that zinc oxide may function by healing properties on wounds. The zinc salt is contained in the amount of 0.001 to 8%. See column 9, lines 30-45.

Hersh et al do not exemplify zinc oxide in the composition.

Although Hersh does not exemplify zinc oxide in the composition, it is deemed obvious to one of ordinary skill in the art to look at the guidance provided by Hersh et al and incorporate zinc oxide in the composition. One would be motivated to do so since Hersh teaches the importance of the inclusion of zinc salts and that zinc oxide has healing properties. Therefore, one would be motivated to add zinc oxide into Hersh's therapeutic composition for skin damage for its healing skin wounds.

Art Unit: 1616

**Claims 2, 6-7, 9-12, 17-19, 28-31, and 34-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillebrand (5,296,500).**

Hillebrand teaches a method of regulating wrinkles with a topical composition containing water, glycerin, tocopherol, N-acetyl-L-cysteine, zinc oxide, and sodium hydroxide (example 4). The composition may contain conventional additives such as soybean saponins. See column 7, line 64. Zinc oxide is taught as a sunscreen agent and is generally included in the amount of 1-20%. See column 8, line 44 to column 9, line 50. The composition is rendered odorless by utilizing zinc salts incorporated in the amount of 0.001-10%. Zinc peroxide is taught as one of the useful zinc salts utilized. See column 4.

Hillebrand does not exemplify a composition incorporating zinc peroxide and the plant substance.

Although, Hillebrand does not exemplify a composition containing zinc peroxide or the plant substance, it is deemed obvious to one of ordinary skill in art to look to the guidance provided by Hillebrand and incorporate the instant plant substance and peroxide. One would be motivated to do so since Hillebrand teaches the conventional use of saponins in the cosmetic art and in the composition. Further, Hillebrand teaches the suitability of zinc peroxide in the composition to mask the odor of the composition. Therefore, a skilled artisan would have a reasonable expectation of success and similar results.

### ***Correspondence***


Art Unit: 1616

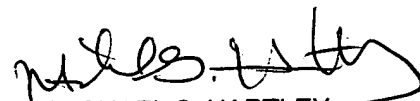
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SSG

  
July 21, 2003

  
MICHAEL G. HARTLEY  
PRIMARY EXAMINER